

# Workers' Compensation Court of Appeals

*January through March 2005*

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***Scholer v. Sherer Brothers Lumber Company, 1/3/05***  
DOI: 11/11/02, 9/19/00, 8/25/99

## Causation – Temporary Aggravation

Substantial evidence, including the well-founded medical opinion of Dr. Boxall, supports the compensation judge's determination that the employee's Aug. 25, 1999, injury was temporary and had resolved.

## Practice and Procedure – Memorandum

Although the compensation judge's one-paragraph memorandum adds nothing by way of explanation to the decision, the judge's findings are sufficiently specific and detailed to allow review of the decision by this court.

Affirmed in part and reversed in part.

***Szuba v. Wendy's International, 1/3/05\****  
DOI: 3/6/01

## Permanent Total Disability

Where substantial evidence does not support the compensation judge's findings, the decision denying permanent total disability is reversed.

Reversed.

\* This case is on appeal to the Minnesota Supreme Court.

***Lindahl v. United Technologies*, 1/4/05**

**DOI: 10/13/80, 12/18/79**

Practice and Procedure – Dismissal

Where the employer did not attach documentation to its petition to discontinue, the compensation judge did not err by granting the employee's motion to dismiss the petition to discontinue.

Affirmed.

***Rudolph v. Dale Gruber Construction*, 1/5/05**

**DOI: 12/27/00**

Practice and Procedure

Where the first medical opinion linking a March 2004 surgery to the employee's work injury was not offered until 10 days before the April 2004 hearing, the employee did not initially object to allowing the employer 30 days to obtain a supplemental medical report, and the compensation judge left the record open for 30 days, anyway, for submission of proposed findings, the compensation judge clearly abused his discretion in going forward with the issue of liability for surgery without allowing the employer to obtain a supplemental medical report.

Affirmed in part, vacated and remanded in part, and modified in part.

***McLaughlin v. Child Care Resource and Referral*, 1/7/05\***

**DOI: 12/18/01**

Temporary Partial Disability – Notice of Discontinuance

Practice and Procedure – Expedited Hearing

Where the compensation judge considered the change in the employee's residency, and the related diminution of the employee's commute to work, as the primary bases for allowing a discontinuance of benefits, and where these factors were not asserted by the self-insured employer as bases for its petition to discontinue, this resulted in an improper expansion of issues not outlined in the petition to discontinue and not contemplated by either party at the time of the hearing, and it was clearly erroneous to evaluate an issue not raised by the employer's petition to discontinue.

Temporary Partial Disability

Job Offer

Where the compensation judge determined that although the employee's original rejection of a job offer was reasonable in view of his job duties, two-hour daily commute to work, work restrictions and physical capabilities, but also determined that his continued rejection of that job, after he later moved his residence to eliminate his commute, was unreasonable, we conclude that the compensation judge erred by considering that job offer as a relevant factor in determining the employee's entitlement to temporary partial disability benefits after November 2003.

### Permanent Partial Disability

Substantial evidence, including medical reports and opinions from the employee's treating physicians, supports the compensation judge's finding that the employee sustained 23 percent permanent partial disability of the whole as a substantial result of his work-related injury.

Affirmed in part and reversed in part.

***Renneker v. Master Mark Products, Inc.*, 1/7/05**

**DOI: 9/8/99, 3/12/94**

### Vacation of Award – Substantial Change in Condition

Where it appeared that there had been a significant change in the employee's diagnosis, his ability to work, his permanent partial disability, and his need for medical treatment since the date of his award on stipulation, and where the employer and insurer had submitted no evidence to contradict the opinions of the employee's treating doctors that both the employee's need for surgery at the time of the stipulation and later consequences of that surgery were causally related to the employee's work injury, sufficient cause was shown to vacate the employee's award on stipulation on grounds that there had been a substantial change in the employee's medical condition, notwithstanding the fact that the employee clearly knew prior to his award on stipulation that he was going to undergo the initial surgery at issue.

Petition to vacate granted.

***Frampton v. Cub Foods*, 1/10/05**

**DOI: 6/26/00**

### Apportionment – Permanent Partial Disability

Minnesota Statutes §176.101, subd. 4a

Substantial evidence supported the compensation judge's decision denying statutory apportionment of permanent partial disability under Minnesota Statutes §176.101, subd. 4a, where the record reasonably supported the compensation judge's conclusion that the employee had no significant disability prior to her work injury. We decline to overrule Beck v. Dick & John's Price Rebel, 40 W.C.D. 254 (W.C.C.A 1987).

Affirmed.

***Leal v. St. Mary's Medical Center*, 1/11/05**

**DOI: 10/17/02**

### Causation

Whether the employment aggravated a pre-existing condition is a question of fact, not law, and a finding of fact on causation by a compensation judge that is based on medical and other evidence in the record will not be disturbed on appeal. There is substantial evidence, based upon the expert opinion of the employee's primary treating physician and the employee's testimony regarding the

## • Summaries of Decisions

onset of symptoms, to support the compensation judge's determination that the employee's work activities aggravated her underlying degenerative disc disease and was a cause of the employee's need for medical care and work restrictions.

Affirmed.

***Gates v. Costco Wholesale*, 1/14/05**

**DOI: 3/26/01, 2/27/01**

### Settlement – Interpretation

Given the extensive factual issues in this matter, the compensation judge erred in determining that the employee's claims were foreclosed by the stipulation without conducting an evidentiary hearing.

Vacated and remanded; petition to vacate denied.

***Viker v. Wal-Mart*, 1/19/05\***

**DOI: 9/25/96**

### Causation – Temporary Aggravation

### Causation – Pre-Existing Condition

Where the employee's pre- and post-work-injury radiological studies were essentially unchanged, where the employee's average symptom levels in the months immediately preceding the injury were very similar to his average symptom levels in the months immediately following the injury, and where the judge's decision was supported by expert medical opinion, the compensation judge's conclusion that the employee's low back work injury was only a temporary aggravation of a significant pre-existing low back condition was not clearly erroneous and unsupported by substantial evidence.

Affirmed.

***Larson v. Hampton Care Center*, 1/20/05**

**DOI: 5/9/94**

### Medical Treatment and Expense – Surgery

Substantial evidence exists to support the compensation judge's approval of fusion surgery for the employee.

Affirmed.

***Manthei v. Layne Minnesota Co.*, 1/20/05**

**DOI: 9/24/03, 11/5/02, 12/27/99, 1/13/99, 10/27/98, 12/29/97, 4/5/96, 10/2/95, 7/1/88**

### Gillette Injury

The parties stipulated at the hearing that they agreed to a certain date of injury if it were to be determined that the employee had sustained a Gillette injury as a result of his work activities,

## • Summaries of Decisions

but the compensation judge found there was no “ultimate breakdown” on that particular date and denied the occurrence of a Gillette injury on that date. Because of the parties’ stipulation, the exact date of the alleged injury was not at issue and was not dispositive of the overall issue of causal relationship between the employee’s work activities and his claimed Gillette injury. Where the judge may have misapprehended the stipulation of the parties and also the level of significance to place on the stipulated date of the alleged injury, and because that misapprehension may have affected the compensation judge’s decision on all issues, the matter is vacated and remanded for further consideration of that issue.

### Causation – Gillette Injury Evidence – Expert Medical Opinion

Where the compensation judge erred by failing to consider one of the employee’s doctor’s opinions regarding causation on the basis that his opinion lacked foundation, remand is necessary for full consideration of that opinion in determining whether the employee’s work activities represented a substantial contributing cause of the employee’s condition and claimed injury.

### Evidence – Practice and Procedure

Where the hearing record had remained open to allow time for parties to submit supplemental medical reports into evidence, where two of the reports were not timely filed with the Office of Administrative Hearings within the period the record remained open, where those reports were intended to address one of the primary issues addressed at hearing, where both parties assumed that one of the reports had already been included in the record and raised no objection to the inclusion of the other report, the matter is remanded for inclusion of those reports into the record and for the compensation judge’s reconsideration in view of the expanded record.

Vacated and remanded.

***Spinks v. Ecowater System*, 1/21/05**  
**DOI: 2/11/03**

### Arising Out Of and In the Course Of

Where the shoulder injury of the employee, who had polio, occurred as a result of his striking only the floor, after a fall when his leg brace failed to lock as he stepped out of a scooter in the employer’s cafeteria to purchase a soft drink, substantial evidence supported the compensation judge’s denial of benefits on grounds that, while it may have occurred “in the course of” the employee’s employment, the injury lacked any causal relationship to the employment and therefore did not “arise out of” that employment.

Affirmed.

***Goebel v. Dyneon Corporation/3M Company*, 1/24/05**

**DOI: 1/15/03**

#### Arising Out Of and In the Course Of

Where the record reasonably supported the conclusion that the employee's knee gave out while she was walking solely as a result of a personal, pre-existing condition, and where there was no evidence that the surface on which the employee landed aggravated the effects of her fall, substantial evidence supported the judge's conclusion that the employee did not establish that her injury arose out of her employment.

Affirmed.

***Johnson v. Itasca Bemidji, Inc.*, 1/24/05**

**DOI: 4/26/02**

#### Causation

Substantial evidence, including expert opinion, supported the compensation judge's decision regarding the nature and extent of the employee's work injury.

Affirmed.

***Busby v. Summit Academy*, 1/26/05**

**DOI: 10/29/98**

#### Temporary Partial Disability

Where there is adequately founded medical support in the record for the compensation judge's findings that the employee's restrictions from her 1998 injury were no longer present at the time of the second hearing in March 2004, substantial evidence supports the compensation judge's finding that the employee was not entitled to temporary partial disability benefits.

#### Appeals – Jurisdiction

Where the parties had agreed at the hearing that the issue of whether the employee had sustained any permanent partial disability as a result of the 1998 injury would not be addressed, the compensation judge erred by making findings regarding the employee's permanent partial disability rating, and therefore, those findings are vacated.

Affirmed in part and vacated in part.

***Powers v. Bachman's, Inc.*, 1/26/05**

**DOI: 9/13/02**

#### Causation

Where no medical opinion provided a causal relationship between the employee's work injury and his subsequent low back condition and fractured toe, substantial evidence does not support the compensation judge's decision.

Reversed.

***Kaufmann v. North Star Steel*, 1/27/05**

**DOI: 4/17/00**

#### Rehabilitation – Retraining Temporary Total Disability – Retraining

Where the compensation judge reasonably concluded the employee audited courses during the fall of 2003 after returning from active duty overseas with the United States Army, prior to recommencing his degree coursework in winter quarter 2004, the compensation judge did not err in ordering that the rehabilitation plan be amended to include the audited coursework, and ordering the employer and insurer to pay temporary total retraining benefits from Sept. 22 through Nov. 30, 2003.

#### Practice and Procedure

Where the employee's requests indicated the nature of the dispute included the "direction of the rehab plan" and entitlement to retraining benefits, the compensation judge did not improperly expand the issues by raising and determining an issue not pled or litigated, as the issue in dispute, whether the employee was entitled to wage loss benefits from Sept. 22 to Nov. 30, 2003, was clearly raised and encompasses the underlying dispute whether styled as an amendment to the rehabilitation plan or a dispute over entitlement to benefits under the existing rehabilitation plan.

Affirmed.

***Kohn, Jr. v. A&M Business Interiors*, 1/27/05**

**DOI: 11/18/99**

#### Attorney Fees Minnesota Statutes §176.081, subd. 1(c)

Where the employee's attorney had filed a Medical Request alleging entitlement to only payment of medical expenses rather than a Claim Petition alleging entitlement to other benefits as well, and where, after the attorney had prevailed on the Medical Request and had been paid Roraff attorney fees for his work on that proceeding, the insurer had paid temporary partial disability benefits based only on the attorney's post-litigation submission of copies of the employee's pay stubs, the compensation judge properly denied the attorney's request for contingent fees on the employee's

## • Summaries of Decisions

temporary partial disability benefits on grounds that those benefits had never been “genuinely disputed” for purposes of Minnesota Statutes §176.081, subd. 1(c).

Affirmed.

***Cannata v. Borchert-Ingersoll, Inc.*, 1/28/05**

**DOI: 3/22/83, 10/27/72, 7/27/72**

### Penalties

#### Full Faith and Credit

Minnesota Statutes §176.221, subd. 8

The state of Minnesota must give full faith and credit to the March 5, 2003 order of the New Hampshire Superior Court staying all judicial, administrative or other actions or proceedings including enforcement of judgments against Home Insurance Company or any act against the property of Home for 90 days. Although the Award on Stipulation and Minnesota Statutes §176.221, subd. 8, required payment to the employee within 14 days of the filing of the award on March 17, 2003, the compensation judge properly held that, under these circumstances, no payment could be made at that time and there was no legal basis for the imposition of a penalty.

Affirmed.

***Aura v. Homewatch Living Assistance*, 1/31/05**

**DOI: 6/9/00**

### Causation

Substantial evidence, including well-founded medical expert opinion, supports the compensation judge’s determination that the employee’s knee condition after Dec. 7, 2001, was not causally related to her work injury of June 6, 2000.

### Temporary Total Disability

Substantial evidence supports the compensation judge’s finding that as of Oct. 30, 2000, the employee had no restrictions on her work activities as a result of her June 6, 2000, personal injury, and her denial of wage loss benefits thereafter.

### Wage – Calculation

Where the employer had been in business only a short time before the employee’s injury, the employee was hired just four days prior to her injury, and the employee’s work included an unusual 24-hour assignment on the day of injury, the compensation judge did not err in calculating the employee’s wage on her hourly earnings, excluding the amount earned by the employee on the day of injury.



Penalties  
Jurisdiction – Subject Matter

The compensation judge properly held she did not have subject matter jurisdiction to hear and determine a claim for penalties against either MIGA or against the employer.

Affirmed.

***Johannsen v. National Steel Pellet Company, 1/31/05***

**DOI: 3/5/01**

Temporary Partial Disability – Earning Capacity

Where the employee returned to work on a part-time basis and remained under work restrictions related to his work injury, substantial evidence supports the compensation judge's finding that the employee's loss of earnings during two periods accurately represented his earning capacity and therefore served as a basis for calculation of temporary partial disability benefits.

Affirmed.

***Karen Johnson v. Red Wing Shoe Company, 2/1/05***

**DOI: 4/30/01, 10/27/99, 3/19/98, 5/29/97, 11/14/90, 6/1/90**

Causation

Substantial evidence, including the testimony of the employee regarding her work activities for the employer and the opinions of medical experts, supports the compensation judge's determination that the employee's work activities for the employer involved repetitive hand and upper extremity movements, and her findings that the employee did not sustain a personal injury to the shoulder on Nov. 14, 1990, but did sustain a Gillette injury to the right shoulder on May 29, 1997, to the left shoulder on March 19, 1998, to the right thumb on Oct. 27, 1999, and to the left thumb on April 30, 2001.

Affirmed.

***Lucero v. SSE Manufacturing Company, 2/7/05***

**DOI: 8/6/02, 4/18/02**

Causation – Aggravation  
Causation – Pre-Existing Condition  
Causation

Where the two work-related aggravations of the employee's pre-existing right leg laceration were frequently referenced in the medical records, and where there were express opinions from the employee's treating doctor and even from the employer and insurer's medical expert that the employee's chronic right leg pain disability was due partly to those two work-related aggravations,

## • Summaries of Decisions

the compensation judge's conclusion that the employee's work activities were a substantial contributing cause of the employee's ongoing right leg condition was not clearly erroneous and unsupported by substantial evidence.

### Temporary Total Disability

Where there was expert medical opinion and other evidence of record from which the judge could reasonably conclude that the employee was totally disabled medically from working during the benefits periods at issue, and where the employee had not been given rehabilitation assistance by the employer and insurer, the compensation judge's award of temporary total disability benefits was not clearly erroneous and unsupported by substantial evidence, notwithstanding the fact that the employee did not search for work during the disability periods at issue.

### Medical Treatment and Expense – Reasonable and Necessary

A compensation judge may accept all or only part of an expert opinion, and, where the medication-based treatment at issue had been briefly effective and was reasonably promising of further effectiveness should the employee obtain resources to pay for it, the compensation judge's award of payment for the treatment at issue was not clearly erroneous and unsupported by substantial evidence, notwithstanding the fact that the judge found insufficient evidence to accept the doctor's specific diagnosis, notwithstanding a lack of objective clinical findings in the doctor's records, and notwithstanding a lack of evidence that the doctor had reviewed all of the employee's medical records.

### Attorney Fees – Edquist

Where the record contained no evidence as to the terms of the employer's short-term disability plan or whether it was even governed by ERISA, the court rejected the appellant employer and insurer's contention that the compensation judge's award of Edquist attorney fees to the employee's attorney, on amounts ordered reimbursed to the short-term disability plan out of the employee's wage replacement award, was improper because ERISA-related events pre-empt any state governed event such as Minnesota Workers' Compensation actions.

Affirmed.

***Schulenburg v. Corn Plus, 2/8/05\****

**DOI: 2/23/03**

### Causation

#### Evidence – Expert Medical Opinion

Substantial evidence of record, including adequately founded expert medical opinion, supports the compensation judge's finding that the employee sustained a permanent aggravation of his pre-existing medical condition as a result of his work-related injury, and the concerns raised by the employer about the foundation for the medical opinion relate to the persuasiveness or weight accorded the medical opinion by the compensation judge and not to a lack of foundation.

### Causation – Aggravation

Although the employee had sought medical treatment for his low back prior to his work injury, substantial evidence of record supports the compensation judge's finding that the employee's work injury to his low back resulted in a permanent aggravation of his pre-existing medical condition.

### Medical Treatment and Expense – Treatment Parameters

Minnesota Rules Part 5221.6020, subp. 2, provides that the medical treatment parameters do not apply to treatment related to an injury after an insurer has denied liability for the injury. For the purposes of application of the permanent medical treatment parameters, a denial of liability includes both a denial of primary liability and a denial of medical causation for subsequent symptoms or conditions.

Affirmed.

***Bettin v. Wal-Mart*, 2/11/05**

**DOI: 3/13/99, 2/27/92**

### Permanent Total Disability

Substantial evidence, including expert vocational opinion, supported the compensation judge's conclusion that the employee is permanently totally disabled as a result of her work injuries.

### Applicable Law – Controlling Event

Where both the employee's 1992 left knee and ankle injuries and her 1999 right knee injury substantially contributed to the employee's permanent total disability, the compensation judge correctly concluded that the 1999 injury was the controlling event for purposes of determining applicable law.

Affirmed.

***Gunderson v. Mac's Landscaping Center*, 2/15/05**

**DOI: 6/30/03**

### Arising Out Of and In the Course Of – Deviation from Employment Arising Out Of and In the Course Of – Prohibited Act

Where the employee was traveling as a passenger between the employer's premises and a work site, where any deviation had ended by the time of the injury, and where there was no evidence that a slight detour for a restroom break and to pick up food items for lunch was prohibited by the employer, substantial evidence supports the compensation judge's determination that the employee's injuries arose in the course of employment.

### Causation

Substantial evidence in the form of adequately founded opinion by the employee's treating doctor supports the compensation judge's decision that the employee sustained a work-related injury to his left eye.

### Temporary Total Disability

Substantial evidence supports the compensation judge's award of temporary total disability benefits where the employee had not been released to work by his treating doctor.

Affirmed; cross-appeal dismissed.

***Romero v. St. Paul Ramsey Medical Center, 2/18/05***

**DOI: 8/28/97**

### Temporary Total Disability

Where the award of temporary total disability benefits was due to an error in identifying the disabling surgery as being related to the work injury, the award is reversed.

Reversed and vacated in part.

***Peterson v. Bullyan Mobile Homes, 2/23/05***

**DOI: 4/4/03**

### Vacation of Award

Given evidence relating to the results of an EMG performed less than two weeks after a hearing on the employer and insurer's petition to discontinue benefits, good cause had been shown sufficient to justify vacating the judge's decision.

Petition to vacate granted; appeal dismissed.

***Huff v. Northwest Airlines Corporation, 2/24/05\****

**DOI: 9/19/03**

### Causation – Aggravation Causation – Pre-Existing Condition

Substantial evidence of record, including medical evidence and testimony and witness testimony, supports the compensation judge's finding that the employee's work injury permanently aggravated her pre-existing condition and represents a substantial contributing cause to her ongoing disability.

### Temporary Total Disability

Substantial evidence of record, including medical evidence and testimony and witness testimony, supports the compensation judge's finding that the employee's work injury permanently aggravated her pre-existing condition and represents a substantial contributing cause to her ongoing disability.

### Practice and Procedure – Scope of Hearing

The compensation judge's decision is vacated to the extent the findings address issues not raised at the hearing.

Affirmed in part and vacated in part.

***Norman v. Diamond Risk Corporation, 2/25/05***

**DOI: 1/11/99**

### Appeals – Notice of Appeal

While failure to serve an adverse party with a notice of appeal is a jurisdictional defect, this court will not dismiss an appeal where the health care provider's motion to intervene had been denied and the subsequent motion was not presented to the compensation judge and no order granting intervention was ever issued.

### Causation – Aggravation

Substantial evidence, including lay testimony, medical records and expert medical opinion supported the finding that the employee had sustained a permanent, rather than temporary, aggravation of his pre-existing low back condition.

### Causation – Psychological Injury

Substantial evidence, including lay testimony, medical records and expert medical opinion supported the finding that the employee had sustained a consequential mental injury.

### Permanent Partial Disability – Low Back Permanent Partial Disability – Mental Injury

Substantial evidence, including lay testimony, medical records and expert medical opinion supported both the rating of a low back injury under the disability schedules and the Weber rating of the employee's consequential mental injury.

### Permanent Total Disability

Substantial evidence, including lay testimony, medical and vocational records and expert medical and vocational opinion supported the finding that the employee was permanently totally disabled.

### Credits and Offsets – Social Security Offset Minnesota Statutes §176.101, subd. 4

Child's insurance benefits are included in calculating the amount of the Social Security offset against permanent and total disability benefits under Minnesota Statutes §176.101, subd. 4.

Affirmed.

• Summaries of Decisions

**Rita Johnson v. Independent School District #829, 2/28/05**

**DOI: 6/1/00**

Earning Capacity  
Job Search  
Temporary Partial Disability

Substantial evidence of record, including the employee's testimony, expert vocational opinion and medical evidence, supports the compensation judge's finding that the employee's wage loss from and after May 30, 2002, was causally related to the employee's work injury.

Affirmed.

**Kotosky v. Cemstone Products Company, 3/1/05**

**DOI: 9/11/03, 2/5, 99**

Gillette Injury

Substantial evidence supported the compensation judge's decision that the employee sustained two Gillette injuries to his right hip, leading to the need for total hip replacement surgery.

Affirmed.

**Barbknecht v. Americ Disc, Inc. of Minn, 3/3/05**

**DOI: 5/3/01**

Medical Treatment and Expense – Reasonable and Necessary

Substantial evidence, including the opinion of the independent medical examiner, supports the compensation judge's determination that the proposed radio frequency neurotomy was not reasonable or necessary to cure or relieve from the effects of the employee's work-related injury.

Causation – Medical Expenses  
Practice and Procedure – Adequacy of Findings

The compensation judge's finding of no causal relationship between the proposed medical procedure and the employee's work injury is vacated where the single finding is conclusory, the basis of or underlying facts essential to the ultimate decision are not apparent, and differing interpretations could be drawn regarding the effect and/or meaning of the finding.

Affirmed in part and vacated in part.

• Summaries of Decisions

***Lange v. State of Minnesota, Department of Corrections, 3/3/05***

DOI: \_\_\_\_

Causation

Substantial evidence supports the compensation judge's finding that the employee failed to prove that her vocal cord dysfunction arose out of and in the course of her employment.

Affirmed.

***Olenchak v. Wenzel Plumbing and Heating, 3/8/05\****

DOI: 4/25/03

Practice and Procedure – Expedited Hearing

Where the employee's attorney did not object to the issues as identified by opposing counsel and where, instead, the attorney argued the merits of those issues, the compensation judge did not improperly expand the issues.

Job Offer – Refusal

Minnesota Statutes §176.101, subd. 1(i)

Where an employee's misconduct consists of noncompliance with the employer's attendance policy for four days, the employee's conduct is not a constructive refusal of a job offer under the statute.

Affirmed in part and reversed in part.

***Engels v. City of Delano, 3/9/05\****

DOI: 7/29/00

Causation

Evidence – Credibility

Where inconsistencies in the histories given by the employee to her many providers were neither few nor minor, where the judge's decision was based primarily and reasonably on her assessment of the employee's credibility, and where the judge's determination did not imply a requirement that the employee prove that work activities were the sole cause of her low back condition, the compensation judge's conclusion that the employee did not prove that her work activities were a substantial contributing factor in her low back condition was not clearly erroneous and unsupported by substantial evidence.

Affirmed.

***Clark v. Lake Superior Paper/M.J. Elec., 3/11/05\****  
DOI: 11/15/86

Penalties

Where the record supports the compensation judge's determination that the facts of this case do not give rise to an award of penalties, we affirm the denial of the employee's claim for penalties.

Attorney Fees – Subd. 7

The compensation judge could reasonably conclude that the employee's attorney was not entitled to attorney fees under Minnesota Statutes §176.081, subd. 7a (repealed) by limiting comparison of the settlement offer to benefits due for a certain period of time.

Affirmed.

***Fleming v. Pike Companies, 3/15/05***  
DOI: 8/13/03

Temporary Benefits – Fully Recovered  
Evidence – Expert Medical Opinion

Substantial evidence in the form of a well-founded medical opinion supports the compensation judge's determination that the employee had fully recovered from his work injury.

Affirmed.

***Hamann v. Advanced Circuits, 3/17/05***  
DOI: 6/9/95

Permanent Total Disability

The compensation judge made specific findings regarding medical care provided to the employee between December 1999 and May 2004, and substantial evidence, including expert medical and vocational testimony, supports the compensation judge's determination that the employee was not permanently and totally disabled.

Affirmed.

***Haukos v. Minnesota Valley Alfalfa, 3/21/05***  
DOI: 2/8/00

Permanent Partial Disability – Combined Ratings

Under the circumstances of this case and the relevant rules, the employee was not entitled to a permanent partial disability rating for lumbar pain syndrome under Minnesota Rules Part 5223.0390,



## • Summaries of Decisions

subp. 3, in addition to an undisputed rating for radicular syndrome under Minnesota Rules Part 5223.0390, subp. 4, and the judge properly declined to assign a separate rating based on IDET procedures.

Affirmed in part and reversed in part.

***Vukelich v. Potlatch Corporation*, 3/21/05**

**DOI: 3/22/97, 2/6/92, 1/1/82**

### Practice and Procedure – Estoppel

Although the self-insured employer had paid benefits for many years calculated on the employee's 1992 work injury, the employer was not, on the facts of this case, barred by the doctrines of laches or estoppel from later asserting that the employee's 1997 work injury was in fact the controlling injury for purposes of determining and calculating an overpayment of permanent total disability benefits.

Affirmed.

***Alarcon v. Coca-Cola Enterprises*, 3/23/05\***

**DOI: 7/7/00**

### Causation

Substantial evidence of record, including extensive medical treatment records and expert medical testimony, does not support the compensation judge's determination that the employee sustained a personal injury to his right foot and his right knee on July 17, 2000, and the judge's award of benefits is reversed.

Reversed.

***Vandenberg v. Independent School District #518*, 3/23/05**

**DOI: 9/15/88**

### Permanent Total Disability

Where it was reasonably supported by expert medical and vocational opinion and the testimony of the employee and was not otherwise unreasonable either medically or vocationally, the compensation judge's award of permanent total disability benefits was not clearly erroneous and unsupported by substantial evidence.

### Permanent Partial Disability – Back Permanent Partial Disability – Combined Ratings

A rating of permanent partial disability is one of ultimate fact for a compensation judge, and, given especially that the two conditions were here treated in two different surgeries separated by seven years, the compensation judge's award based on a combination of ratings for both disc herniation and spinal stenosis on grounds that those two conditions were separate and distinct problems both contributing to the employee's level of disability and functional impairment was not clearly erroneous and unsupported by substantial evidence.

Intervenors  
Practice and Procedure – Remand

Where it could not be determined from the record whether or not the potential intervenor had had proper opportunity to assert its claim in a timely fashion, and where the potential intervenor's motion to intervene was filed two days after the record closed in the matter and so left the employer without proper opportunity to consider and assert its defenses, the compensation judge's finding and order awarding reimbursement to the potential intervenor were vacated and remanded to the compensation judge for rehearing and redetermination upon proper notice and opportunity for the parties to prepare their cases.

Affirmed in part and vacated and remanded in part.

***Zweig, deceased v. Pope Douglas Solid Waste*, 3/28/05\***

**DOI: 2/11/02**

Penalties

Substantial evidence supports the compensation judge's findings that until receipt of a medical report from an independent medical record review, there was no medical opinion causally relating the employee's July 2002 surgery to his work injury, that the employer and insurer had a reasonable basis to deny liability for temporary total disability benefits claimed in relation to the July 2002 surgery, and that there was no basis for penalties, prior to the receipt of the report from the independent medical record review, for the delayed payment of benefits.

Penalties  
Minnesota Statutes §176.221

Where the employer and insurer no longer had any defense to the employee's claims once they received a medical report from an independent medical record review, and where the employer and insurer delayed payment of benefits after the 14-day period required by Minnesota Statutes §176.221, a penalty is owed for the delay in payment of benefits and the matter is remanded to the compensation judge for determination of the amount of penalty owed.

Penalties – Heirs  
Minnesota Statutes §176.225

A deceased employee's heirs may assert a claim for penalties under Minnesota Statutes §176.225.

Affirmed in part, reversed in part, and remanded in part.

• Summaries of Decisions

***Nadeau deceased by Nadeau, 3/29/05***  
**DOI: 12/28/99**

Permanent Partial Disability – Back  
Minnesota Rules Part 5223.0390, subps. 4 and 5

Where there was no basis for combining ratings from within subpart 5 of Minnesota Rules 5223.0390 to compensate the employee a second time for a repeat fusion at the same level of his spine, and where no doctor had documented a functional loss of use or impairment of function that would warrant more than the 10 percent rating authorized under the rules for the initial fusion, the compensation judge's award of benefits for a 10 percent whole body impairment was not legal error.

Affirmed as modified.

***Franklin v. Kurt Manufacturing, 3/31/05***  
**DOI: 12/27/99, 11/24/99**

Vacation of Award – Substantial Change in Condition

Where the pre-settlement and post-settlement medical records and the affidavits and memorandum submitted by the employee do not show any substantial or significant change in the employee's condition subsequent to the Award on Stipulation issued Sept. 27, 2002, the employee's petition to vacate the award must be denied.

Petition to vacate denied.

# Minnesota Supreme Court

*January through March 2005*

Case summaries published are  
those prepared by the WCCA



• *Rana M. Scanlon v. Caille Farm, Inc., Uninsured, and Minneapolis Radiology Assoc., Intervenor, and Special Compensation Fund, A04-2259, Jan. 31, 2005*

Decision of the Workers' Compensation Court of Appeals filed Oct. 26, 2004, affirmed without opinion.

• *Bryan Hodgson, deceased, by Lynn Hodgson v. Al's Tree Service, Uninsured, and Special Compensation Fund, and Linda Hanenburg, on behalf of Leah Hanenburg, A04-1829 and A04-1865, Feb. 15, 2005*

Decision of the Workers' Compensation Court of Appeals filed Sept. 8, 2004, affirmed without opinion.

• *Kenneth E. Stone v. Harold Chevrolet, and ASU Risk Management Group, A04-2311, Feb. 24, 2005*

Decision of the Workers' Compensation Court of Appeals filed Nov. 3, 2004, affirmed without opinion.

• *Tanya L. Varda v. Northwest Airlines Corp., and Liberty Mutual Insurance Co., A04-1707, Feb. 24, 2005*

## SYLLABUS

Where the undisputed facts show that a two-year retraining program would restore an injured employee to an economic status higher than she enjoyed before her disability, the Workers' Compensation Court of Appeals correctly determined that the record did not support the compensation judge's conclusion that a more costly four-year program was "necessary."

• *Alan L. Bradwell v. U.S. Roof Tech Corporation, and CNA Commercial Insurance, A04-2148, March 15, 2005*

Decision of the Workers' Compensation Court of Appeals filed Oct. 22, 2004, affirmed without opinion.

## • Summaries of Decisions

- ***Joseph Sweet (deceased), by Germaine Deagan Sweet v. Tremendous! Entertainment Inc., and St. Paul Companies, A04-2149, March 15, 2005***

Decision of the Workers' Compensation Court of Appeals filed Oct. 15, 2004, affirmed without opinion.

- ***Timothy A. Sundby v. City of St. Peter, Self-Insured, adm'd by Berkley Risk Administrators Co., Rolco, Inc., and State Fund Mutual Insurance Co., and Special Compensation Fund, A04-1047, March 17, 2005***

## SYLLABUS

Social Security Disability Insurance child's benefits are to be included when calculating the amount of the reduction in an employer's workers' compensation benefits payments under Minnesota Statutes §176.101, subd. 4 (2004).

The Workers' Compensation Court of Appeals did not exceed its authority by examining the Social Security Act when it looked to the federal law for instruction in ascertaining whether Social Security Disability Insurance benefits may be included in the workers' compensation benefits offset calculation provided for in M.S. §176.101, subd. 4.

- ***Gerilynn L. Walbridge v. Northern Hydraulics, and Compost, Medical/Healthcare Recoveries, Intervenor, A04-2232, March 17, 2005***

Decision of the Workers' Compensation Court of Appeals filed Oct. 22, 2004, affirmed without opinion.

- ***Alan L. Bradwell v. U.S. Roof Tech Corporation, and CNA Commercial Insurance, A04-2148, March 23, 2005***

Decision of the Workers' Compensation Court of Appeals filed Oct. 22, 2004, affirmed without opinion.

- ***Jill R. Voshage v. State of Minnesota-MNSCU St. Univ.-Winona, and Self-Insured, Community Memorial Hospital, Blue Cross/Blue Shield & Blue Plus, Hartford Life, and Gunderson, Ltd., Intervenor, A04-2438, March 29, 2005***

Decision of the Workers' Compensation Court of Appeals filed Oct. 15, 2004, affirmed without opinion.

- ***Robert G. King v. Woodsman Midwest, Inc., and Auto-Owners Insurance Group, and Kenwood Chiropractic Arts, Intervenor, A04-2071, March 29, 2005***

Decision of the Workers' Compensation Court of Appeals filed Sept. 30, 2004, affirmed without opinion.